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Supreme Court, U.S.
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No. 87-630

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JAROSLOW DOBROWOLSKYJ - - Petitioner

versus

JEFFERSON COUNTY, KENTUCKY,
Et Al. - - - - - - - - - Respondents

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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34pp

QUESTIONS PRESENTED

Whether the Petitioner was denied due process of law under the Fourth and Fourteenth Amendments to the United States Constitution when the Petitioner was strip searched at the Jefferson County Jail, when said search was conducted in conformity with Federal Court Order in *Tate* v. *Frey*, C-75-0031-L(A).

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LIST OF ALL PARTIES TO THE PROCEEDING

Jaroslow Dobrowolskyj

Michigan .....Plaintiff

Jefferson County, Kentucky

Bremer Ehrler, County/Judge Executive
Jefferson County, Kentucky

Richard A. Frey, Jr., Secretary for Corrections of Jefferson County Department of Corrections

and

Unknown Correctional Officers .....Defendants

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No. 87-630

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

JAROSLOW DOBROWOLSKYJ - - - *Petitioner*

v.

JEFFERSON COUNTY, KENTUCKY,
Et Al. - - - - - - - *Respondents*

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Following a trial before jury on January 27 and 28, 1986, and the jury having returned a verdict for the Defendants, Judge Edward H. Johnstone, Chief Judge of the United States District Court for the Western District of Kentucky at Louisville, dismissed *Jaroslow Dobrowolskyj* v. *Jefferson County, et al.*, C-85-0405-L(J) from the court's docket. The Order of the District Court is unreported and is reproduced in Appendix A hereto, *infra,* page 1a. The United States District Court for the Sixth Circuit affirmed the judgment of the District Court, which is reported at 823 F. 2d 985 (6th Cir. 1987).

JURISDICTION

The opinion of the United States Court of Appeals for the Sixth Circuit was entered on July 13, 1987. The Petitioner's Petition for Re-Hearing was denied on August 17, 1987. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1).

STATUTES INVOLVED

This case involved the Constitutional provisions of the Fourth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

On April 17, 1984, Jaroslow Dobrowolskyj, an attorney living then in Detroit, Michigan, was arrested at the Hall of Justice in Louisville, Kentucky, pursuant to an arrest warrant preferred by his ex-wife, Mrs. Dobrowolskyj. The criminal warrant charged him with menacing, a violation of K.R.S. 508.050, which provides that "[a] person is guilty of menacing when he intentionally places another person in reasonable apprehension of eminent physical injury."

Dobrowolskyj was interviewed by a pre-trial release officer, an employee of the Kentucky Administrative Office of the Courts, and his bond was established at $100.00. Following his processing into the jail, he was permitted to make several telephone calls to attorneys in Michigan and Kentucky, whereupon he secured a local attorney to post bond for him. During this initial incarceration, he was first confined in

a front holding cell and was only pat-searched or frisk-searched—at no time during the incipient states of his incarceration was he subjected to a strip search.

During his incarceration in the front holding cell, additional prisoners were received by the Corrections Department and, pursuant to *Tate* v. *Frey,* No. 75-0031-L(A), a class action lawsuit, which challenged many procedures of the jail, the population in the front holding cell could not exceed twenty prisoners—at which time and after approximately four hours in the holding cell, Dobrowolskyj and five other prisoners were moved to the rear security area, a separate and distinct area of the jail, wherein the general inmate population is able to comingle. The rear secure area of the jail is the main traffic area through which all inmates are moved, both to and from court, and to other areas and facilities of the Jefferson County Corrections Department. This area contains the most diverse cross-section of the Jail's population, including inmates classified as maximum security. Pursuant to Departmental policy, Dobrowolskyj was strip searched prior to his movement to the rear security area. The movement and search were in accordance with Departmental policy, which had been approved by the District Court in *Tate* v. *Frey, surpa.* The relevant part of the policy reads:

> "All inmates will be thoroughly searched each time an inmate passes from one security area to another, being prepared for transportation, both between floors and externally, and upon admission

> to the Department. All newly admitted inmates to the Department will be frisk searched upon arrival to the Department, and strip searched immediately prior to the movement of the inmate to the rear security, female section, or other areas of the Department."–

The policy further provides that strip searches will be conducted in private with only one officer in attendance unless the inmate's behavior dictates more than one officer be present. Searches are always conducted by an officer of the same sex as the inmates. Strip searches are visual only and the officer does not touch the inmate. Although the Petitioner alleged that the search was conducted in full view of other inmates, he could offer no independent corroboration of that allegation.

Dobrowolskyj argued, both at the trial court and the Court of Appeals, that the automatic strip search provision which engaged at the time the person was transferred from the front holding area to the general inmate population was unconstitutional. The District Court held that the constitutionality of the search policy had been settled by the consent decree, *Tate* v. *Frey, supra,* which had approved the policy.

ARGUMENT IN OPPOSITION TO WRIT OF CERTIORARI

As the Sixth Circuit Court of Appeals stated:

> "Second, and more important, Jefferson County's policy was not a blanket search of all detainees as in the policies held unconstitutional in the above

> cases, but a more narrowly drawn policy of searching only those detainees who were required, by force of circumstance, to be moved into the general jail population. Dobrowolskyj was not moved until he had been in the jail for several hours. The move was necessitated by the over-crowding in the front holding cell, which had been limited to a capacity of twenty prisoners by the class action consent decree in *Tate* v. *Frey.*" Slip Opinion p. 7, appendix p. 10a.

In only one instance has the Supreme Court analyzed the rights of prisoners to be free from unreasonable searches and seizures. In *Bell* v. *Wolfish,* 441 U. S. 520, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979), which held that:

> "The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case, it requires a balancing of the need for the particular search against the invasion of personal rights the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating, and the place in which it is conducted. (Citations omitted)."

A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence. *Bell, id.,* 441 U. S. at 559, 99 S. Ct. at 1884, 60 L. Ed. 2d at 481. The balancing test formulated in *Bell* pits the arrestee's qualified right of

privacy against the correctional facility's interest in insuring the security of its inmates as well as the safety of its own personnel and visitors. It has been observed that whatever privacy rights a free citizen enjoys, those rights are curtailed upon arrest and/or committment by law to a correctional facility. *Bell, supra,* 441 U. S. at 546, 99 S. Ct. at 1883, 60 L. Ed. 2d at 473. Adopting the language of *Price* v. *Johnson,* 334 U. S. 266, 285, 68 S. Ct. 1049, 92 L. Ed. 2d 1356 (1948), the Court in *Bell* opined:

> "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a restriction justified by the considerations underlying our penal systems."

Placement in the controlled environment of such a large metropolitan correctional facility following arrest results in a certain loss of privacy and justifyable invasion thereinto. This diminution in the individual's right of privacy is necessitated by the correctional facility's interest in preventing the flow of contraband and dangerous contraband into the jail in order to protect detainees, inmates, correctional personnel, and visitors. Searches, and especially strip and visual cavity searches, are therefore a reasonable concomitient of detention inasmuch as they permit correctional officers to shut off the singular most prevalent and dangerous port of entry for contraband and distribution within the facility of contraband. While submitting to a strip or visual cavity search by a correctional officer may be degrading and intrude upon the

individual's right of privacy causing the court in *Bell* to pause—the institutional and state interest is in this setting superior to the individual's interest of privacy. Absent is a showing of clear abuse or wanton misconduct on the part of a correctional facility, a strip search policy of the kind herein challenged must be sustained under *Bell* v. *Wolfish.*

It is interesting to note that following the strip search of the person immediately prior to his assignment to the general inmate population, the person will be sharing open showers, open urinals-lavatories, and dressing and undressing continuously in the presence of other inmates and correctional personnel. As a point of departure, the strip search is in all probability the last time the inmate will have any modicum of privacy during the remainder of his incarceration and is the most private moment that he will enjoy while incarcerated.

The Sixth Circuit Court of Appeals has expressly adopted a line of reasoning in holding that the visual search of an arrestee conducted at a county jail by an officer of the same sex, does not violate the Fourth Amendment rights of the arrestee. *Dufrin* v. *Spreen,* 712 F. 2d 1084 (6th Cir., 1983).

The Departmental search policy herein challenged by the Plaintiff is less offensive on its face and in actual execution than either of those upheld in *Bell* or *Dufrin, supra.* While the decisions in *Bell* and *Dufrin* could be denominated indiscriminate search policies, the policy employed by the Jefferson County Corrections Department by no means subjects every detainee

to a strip search. According to Director Frey, only approximately 8,000 to 8,500 detainees per year out of a total received inmate population of approximately 36,000 individuals undergo a strip search. Approximately 28,000 individuals initially booked by the Jefferson County Corrections Department are released prior to transfer to the general inmate population and therefore are released prior to a strip search. Implementation of the strip search policy is triggered only when arrestees accumulate in the holding area of the correctional facility and are thereafter transferred to the general inmate population. It is in this area that they are intermingled with the general inmate population and classified to various housing areas in the Department. Within the general inmate population, there are approximately one or two guards per approximately sixty-two inmates as opposed to one guard per every two to three inmates in the front holding cell area, an approximately thirty-fold decrease in direct supervision by the correctional staff.

Because the general inmate population is less heavily guarded and contains members of the general jail population awaiting court appearances, it is necessary to conduct thorough searches of the individuals transferred thereto to prevent the introduction of contraband into the main inmate population. As in *Bell* and *Dufrin,* the institution's interest in protecting its inmates, employees and visitors is paramount to the individual's qualified right of privacy.

Moreover, the Supreme Court has acknowledged that "wide ranging deference" must be accorded to

those in charge of correctional facilities, since they are best situated to decide the extent to which more liberal policies and practices may safely be adopted consistent with internal order, discipline and security. *Bell, supra,* 441 U. S. at 547, 99 S. Ct. at 1883, 60 L. Ed. 2d at 474.

CONCLUSION

The stipulation of settlement of class action in *Tate* v. *Frey,* is controlling upon all members of the class as certified pursuant to the Federal Rules of Civil Procedure, Rule 23(a) and 23(b)(2). Plaintiff is a member of the class as certified and the search issues addressed by the stipulation for settlement of class action are exhaustive and binding upon the Plaintiff. The policy of the Jefferson County Corrections Department with respect to detainee's strip searches is not a blanket policy but in fact only approximately 23% of the individuals admitted to the facility are subjected to a strip search, which is conducted in private by an employee of the same sex as the detainee and immediately prior to the inmate's transfer from a holding area to the general inmate population.

Therefore, the jury verdict for the Defendants herein which was subsequently affirmed by the Sixth Circuit Court of Appeals should not be reviewed by

this court and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that three copies of the foregoing Defendants/Appellees' Brief were mailed to Mr. William P. Radigan, Attorney for Petitioner/Appellant, 800 Republic Building, 429 West Muhammad Ali Boulevard, Louisville, Kentucky, 40202, on this 15th day of January, 1988.

ALLEN P. DODD, III

APPENDIX

APPENDIX

Civil Action No. 85-0405 L(J)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JAROSLAW DOBROWOLSKYJ

v.

JEFFERSON COUNTY, Et Al.

ORDER—Entered January 28, 1986

The trial of this action was held on January 27 and 28, 1986. The jury returned a verdict for the defendant, Richard Frey, in his capacity as Jefferson County Corrections Department.

IT IS HEREBY ORDERED that this action is DISMISSED from the docket of the Court.

This 28th day of January, 1986.

(s) Edward H. Johnstone
Chief Judge
United States District Court

cc: Counsel

RECOMMENDED FOR FULL TEXT PUBLICATION
See, Sixth Circuit Rule 24

Nos. 86-5234; 86-5451

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JAROSLAW DOBROWOLSKYJ, - - *Plaintiff-Appellant,*

v.

JEFFERSON COUNTY, KENTUCKY;
Et Al., - - - - - *Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

Decided and Filed July 13, 1987

Before: LIVELY, Chief Judge; BOGGS, Circuit Judge; and CELEBREZZE, Senior Circuit Judge.

BOGGS, Circuit Judge. Plaintiff-Appellant Jaroslaw Dobrowolskyj was arrested on a misdemeanor charge in Jefferson County, Kentucky, and strip searched while he was being held at the Jefferson County Jail awaiting a lawyer to post his $100 bond. He sued the jail, its director, and the county, claiming that their policy of strip searching pretrial detainees was unconstitutional. The district court found that the constitutionality of Jefferson County's strip search policy had already been settled by the consent decree in *Tate* v. *Frey,* No. 75-0031(A) (Oct. 1, 1985), a class action which had challenged many procedures at the jail. The court denied Dobrowolskyj's motions for declaratory judgment, summary judgment and directed verdict. The case

was submitted to a jury which returned a verdict for the defendants. Dobrowolskyj appeals the district court's denial of his motions. We hold that Jefferson County's strip search policy is constitutional and accordingly, affirm the rulings of the district court.

Dobrowolskyj, a Michigan resident, was arrested at the Jefferson County Courthouse on April 17, 1984, on a warrant sworn out by his ex-wife. He was charged with menacing, a misdemeanor under Kentucky law. He was taken to the Jefferson County Jail where he had to wait for several hours before he could find a local lawyer to post bond for him. He was first placed in the front holding cell in the basement, the area where arrestees were initially detained during processing by the Department of Corrections and determination as to the likelihood of their being released on bond. If release was imminent, the person would remain in the holding cell, rather than being classified and transferred to one of the main sections of the jail. Detainees in this area were subjected only to a frisk or "pat down" search.

Unfortunately for Dobrowolskyj, other detainees arrived at the jail while he was being held, and the front holding cell, which had a capacity for only twenty prisoners, became overcrowded. Approximately six prisoners, including Dobrowolskyj, had to be moved to the rear security area where the general jail population was housed. The rear security area in the basement was the main traffic area of the jail, through which all inmates were moved on their way to and from court appearances and the upper sections of the jail. This area thus contains a cross-section of the jail's population, including inmates from the maximum security areas. Dobrowolskyj was strip searched before he was moved to the rear area. The movement and search were in accordance with departmental policy which had

been approved by the district court in the *Tate* v. *Frey* consent decree.

The relevant part of the policy read:

> All inmates will be thoroughly searched each time an inmate passes from one security area to another, being prepared for transportation both between floors and externally, and upon admission to the Department. All newly admitted inmates to the Department will be frisk searched upon arrival to the Department and strip searched immediately prior to the movement of the inmate to rear security, female section or other areas of the Department.

The policy also provided that all strip searches would be conducted in private with only one officer unless the inmate's behavior indicated that more than one officer might be required. The officers were always to be of the same sex as the inmate. Strip searches were visual only. The officer was not to touch the inmate, although the policy indicated that body orifices were to be closely inspected. Any manual search was considered a body cavity search, to be carried out only by medical personnel after authorization by the senior officer in charge of the area. Body cavity searches required a reasonable suspicion that the inmate was concealing contraband. Strip searches did not require the same reasonable suspicion, but were conducted automatically upon movement from one security area to another.

Dobrowolskyj sued the jail, arguing that the automatic strip search without reasonable suspicion violated the fourth amendment. The district court held that the constitutionality of the search policy had been settled by the consent decree in *Tate* v. *Frey* approving the policy. The court denied Dobrowolskyj's motion for declaratory judgment. The court also denied Dobrowolskyj's motions for summary judgment and directed verdict on the question of

liability, and the case was tried to a jury which returned a verdict for the county. Dobrowolskyj appeals the district court's rulings on the constitutionality of the search policy.

The Supreme Court considered the issue of strip searches briefly in *Bell* v. *Wolfish*, 441 U. S. 520 (1979). The Court overturned a lower court decision holding that routine strip searches of pretrial detainees conducted after contact visits violated the fourth amendment absent probable cause to believe that the inmate was concealing contraband. The Court held that these searches were not unreasonable and thus did not violate the fourth amendment. *Bell* sets out a balancing test for reasonableness, stating that the fourth amendment

> requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Id. at 559. The Court held that the searches after contact visits could be conducted without probable cause to suspect that a particular inmate was concealing contraband because the unique and serious security interests of the detention facility outweighed the privacy interest of the inmate. *Id.* at 559-560.

Bell has not been read as holding that the security interests of a detention facility will always outweigh the privacy interests of the detainees. The balancing test must be applied in each case and the particular search must still be reasonable under the fourth amendment. The majority of the circuits have held unconstitutional blanket strip search policies of all inmates including those detained only on minor misdemeanor charges or traffic offenses. These courts have held that automatic strip searches of all de-

tainees violate the fourth amendment without a reasonable suspicion, based on the nature of the charge, the characteristics of the detainee, or the circumstances of the arrest, that the detainee is concealing contraband. *See Weber* v. *Dell,* 804 F. 2d 796, 802 (2nd Cir. 1986); *Jones* v. *Edwards,* 770 F. 2d 739 (8th Cir. 1985); *Stewart* v. *Lubbock County, Texas,* 767 F. 2d 153 (5th Cir. 1985) *cert. denied,* 106 S. Ct. 1378 (1986); *Giles* v. *Ackerman,* 746 F. 2d 614 (9th Cir. 1984), *cert. denied,* 471 U. S. 1053 (1985); *Hill* v. *Bogans,* 735 F. 2d 391 (10th Cir. 1984); *Mary Beth G.* v. *City of Chicago,* 723 F. 2d 1263 (7th Cir. 1983); *Logan* v. *Shealy,* 660 F. 2d 1007 (4th Cir. 1981), *cert. denied,* 455 U. S. 942 (1982); *Fann* v. *City of Cleveland,* 616 F. Supp. 305 (N.D. Ohio 1985); *Tinetti* v. *Wittke,* 479 F. Supp. 486 (E.D. Wis. 1979), *aff'd,* 620 F. 2d 160 (7th Cir. 1980) (per curiam).

This circuit has previously considered the strip search issue in *Dufrin* v. *Spreen,* 712 F. 2d 1084 (1984). We upheld a strip search of a woman charged with a felony against fourth amendment challenge, holding that the search was reasonable under the balancing test of *Bell* v. *Wolfish* which counselled wide-ranging deference in security matters to prison officials. *Dufrin* distinguished *Logan* and *Tinetti* on the basis of the nature of the charged offenses, and held that the routine search was reasonable under the circumstances, including the facts that

> (a) the arrestee was formally charged with a felony involving violence, (b) that her detention was under circumstances which would subject her potentially to mingle with the jail population as a whole, and (c) that the search actually conducted was visual only, and was carried out discreetly and in privacy. Where these circumstances exist, we do not believe that the sheriff is obliged, as a matter of federal constitutional law, to make a subjective evaluation of the underlying nature

> of the offense or to determine whether a less intrusive search may be employed.

Id. at 1089.

Dobrowolskyj argues that the strip search in his case violated the fourth amendment because it was an automatic search triggered only by his movement within the jail and was not based on a reasonable suspicion that he might be concealing contraband. He distinguishes *Dufrin,* arguing that the holding in that case applies only to persons charged with felonies and should not be extended to accused misdemeanants. He argues that we should follow the opinions of other circuits which have held that blanket searches of all misdemeanor detainees are unreasonable under the fourth amendment balancing test.

Dobrowolskyj's argument is not persuasive. Applying the balancing test of *Bell* v. *Wolfish,* we find that the security interests of the detention officials here are even stronger than they were in *Dufrin.* Looking first at the nature of the offense, Dobrowolskyj was not charged with a traffic offense or other minor misdemeanor, but with menacing, a class B misdemeanor under Kentucky law. Ky. Rev. Stat. Ann § 508.050 (Baldwin 1987) provides that "[a] person is guilty of menacing when he intentionally places another person in reasonable apprehension of imminent physical injury." The statute was designed to replace common law simple assault, but was also intended to reach certain conduct which could not be reached under common law assault in some jurisdictions, such as threatening with an unloaded weapon. Ky. Rev. Stat. Ann § 508.050 Kentucky Crime Commission Commentary (Baldwin 1987). Based on the nature of the menacing charge, the jail officials certainly had as much reason to suspect Dobrowolskyj of concealing weapons or other contraband as did the officials considering the nature of Mrs. Dufrin's

charged felony. Mrs. Dufrin was arrested at her home on a warrant which charged that she had beaten her sixteen-year-old stepdaughter with a broom handle two months before the arrest.

Second, the security interests of the jail in this case were stronger than in *Dufrin* as Dobrowolskyj was not searched until he was about to be moved into contact with the general jail population. The necessity for the search was not as great in *Dufrin* as here. Conditions were such that if Mrs. Dufrin had remained at the jail she would eventually have been in contact with the general jail population, but she did not have such contact while she was detained. The jail was not crowded while she was there. She remained alone in an individual cell throughout the night and was released in the morning. Here, Dobrowolskyj did come into contact with the general jail population while he was detained at the jail, and was searched only when that contact was imminent.

This case is distinguishable in two ways from the cases in other circuits holding blanket searches of all persons detained on minor misdemeanor charges unconstitutional.[1] First, the nature of Dobrowolskyj's charged offense was

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[1]Dobrowolskyj is also in a much different procedural posture than the plaintiffs in most of the strip search cases as he is challenging the judgment of the district court after his constitutional claims were fully presented to a jury which returned a verdict against him. Almost all of the other cases involve situations where the district court granted summary judgment to the defendants after holding the search policies constitutional and the circuit court reversed the summary judgment and remanded for further proceedings, or cases where the circuit court affirmed the district court's ruling that the search policy was unconstitutional as a matter of law. Only one of these cases, *Jones* v. *Edwards,* 770 F. 2d 739 (8th Cir. 1985), held that the strip search violated the plaintiff's fourth amendment rights after a jury had returned a verdict for the defendants.

different than in those cases which held automatic strip search policies unconstitutional because they included persons detained on minor traffic offenses and other misdemeanors not normally associated with weapons or other contraband. Menacing is an offense that is associated with weapons, and may well raise reasonable suspicion on the part of the jail officials that a person detained on that charge may be concealing weapons or other contraband.

Second, and more important, Jefferson County's policy was not a blanket search of all detainees as in the policies held unconstitutional in the above cases, but a more narrowly drawn policy of searching only those detainees who were required, by force of circumstance, to be moved into the general jail population. Dobrowolskyj was not moved until he had been at the jail for several hours. The move was necessitated by the overcrowding in the front holding cell, which had been limited to a capacity of twenty prisoners by the class action consent decree in *Tate* v. *Frey*. There is no indication that Dobrowolskyj was moved as a pretext to search him, or for any reason other than logistical necessity. Although we do not underestimate the intrusion in Dobrowolskyj's case, this more restricted policy has a less intrusive impact on the privacy interests of all detainees than a broader blanket search policy. The search policy also provided that the searches would be conducted in private without degradation or embarassment to either the inmate or the officer.

The security interests of the jail in conducting a search at this point were strong. Dobrowolskyj was about to come into direct contact with the general jail population, including prisoners who would then be moved into all sections of the jail. The jail had legitimate interests in preventing the flow of contraband into the other sections of the jail.

The reasonableness of the search policy is also indicated by the fact that it had previously been approved by

the district court in the consent decree in *Tate* v. *Frey*. The consent decree in this class action suit attempted to craft a search policy for Jefferson County Jail which was narrowly tailored to meet specific security needs. Applying the balancing test from *Bell*, we find that the security interests of the jail outweigh the privacy interests of the inmates in the circumstances of this case. Thus, Dobrowolskyj's search was not unreasonable and did not violate the fourth amendment. Accordingly, we AFFIRM the judgment of the district court.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action No.: C75-0031-L(A)
C79-0492-L(A)-24
C79-0570-L(A)-34

DON TATE, et al. - - - - - - - *Plaintiffs*

v.

RICHARD FREY, et al. - - - - - - *Defendants*

ORDER CERTIFYING CLASS

Motion having been made, and the Court otherwise being sufficiently advised;

IT IS HEREBY ORDERED AND ADJUDGED, that the Plaintiff class be and hereby is certified and divided into four subclasses defined as follows:

a. The first subclass, represented by JACQUELINE HUNTER, is composed of all female prisoners who are now or will be confined in the Jefferson County Jail and are awaiting trial, and not serving sentence for any misdemeanor or felony conviction. This subclass shall be known as the "female pretrial detainee" subclass.

b. The second subclass, represented by DIANE BOLIN, is composed of all female prisoners who are now or will be incarcerated in the Jefferson County Jail for the purpose of serving sentence for a misdemeanor or felony conviction and shall be known as the "convicted female" subclass.

c. The third subclass, represented by ERVIN TYUS, is composed of all male prisoners who are now or will be confined in the Jefferson County Jail and are awaiting trial and not serving sentence for any misdemeanor or felony conviction. This subclass shall be known as the "male pretrial detainee" subclass.

d. The fourth subclass, represented by HUBERT RINGO is composed of all male prisoners who are or will be incarcerated in the Jefferson County Jail for the purpose of serving sentence for a misdemeanor or felony conviction and shall be known as the "convicted male" subclass.

The Plaintiff class shall consist of the four above-defined subclasses.

8 - 15 - 80
DATE

(s) Charles M. Allen
Honorable Charles M. Allen
United States District Court Judge

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action Numbers:
C-75-0031-L(A)
C-79-0492-L(A)
C-79-0570-L(A)
C-83-0254-L(A)

DON TATE, et al., - - - - - - *Plaintiffs*

v.

RICHARD FREY, et al., - - - - - *Defendants*

EXCERPT
STIPULATION FOR SETTLEMENT OF CLASS ACTION

XXIII. SEARCHES

Defendants agree to establish policies addressing the search of inmates and inmate's property. Defendants shall have wide ranging discretion and latitude concerning the search of inmates and all areas and materials within the facility. The search policies should provide for the avoidance of unnecessary force, embarassment or indignity to the inmates. The use of non-intrusive sensors and other techniques of body inspection are encouraged.

Frequent unannounced searches of inmates, inmate living areas, the physical structure of the building and employees will be conducted as often as necessary to ensure the safety and security of the facility and all persons therein.

Definitions:

a. Frisk Search—A search of the person which is conducted by an employee touching the outer clothing of an inmate and feeling for large objects of contraband. Outer clothing such as coats, shoes, and hats are removable.

b. Strip Search—A search of the person which is conducted by an employee by visually inspecting the person following removal by the inmate of the inmate's clothing.

c. Body Cavity Search—A medically conducted search of the inmate's interior areas of body conducted under medical conditions, by medical personnel and with probable cause that the person has concealed within a body cavity or elsewhere within the body contraband.

The following general guidelines are incorporated into the jail search policies.

a. All inmates under the control of the jail are subject to search at all times.

b. Inmates will be searched by employees of their gender.

c. All strip and body cavity searches will be conducted in private.

d. All inmates entering or leaving the security perimeter will be strip searched, except inmates in the front holding areas who will only be strip searched upon reasonable belief that a strip search is required for security purposes as described in item "g" below.

e. All inmates coming into direct contact with a visitor will be strip searched.

f. All inmate property and living areas are subject to search at all times.

g. All inmates are subject to strip search upon reasonable belief that the inmate may be in possession of contraband.

h. All inmates are subject to frisk search at all times.

i. Inmates are subject to body cavity searches based upon probable cause supported by oath or affirmation.